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SEP 16 2005

OFFICE OF PETITIONS

In re Application of :
Fujioka, et al. : DECISION UNDER
Application No. 09/944,444 : 37 CFR 1.705(b)
Filed: August 31, 2001 :
Atty. Dkt. No.: RCOH-1036 :

This is a decision on the "APPLICATION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(b)" filed January 31, 2005.

The application for patent term adjustment ("PTA") under 37 C.F.R. § 1.705(b) is hereby **DISMISSED**.

The Office will adjust the PAIR screen to reflect that the Patent Term Adjustment (PTA) determination at the time of mailing of the Notice of Allowance and Issue Fee Due reflects an adjustment of 483 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

Applicants request that the Determination of Patent Term Adjustment be corrected from 488 days, as indicated on the Determination of Patent Term Adjustment mailed December 15, 2004 to an adjustment of 551 days.

Review of the application file history reveals that at the time of allowance, an adjustment of 488 days in accordance with 37 CFR 1.702(a)(1) and 1.703(a)(1) could be attributed to the Office.

As indicated by applicants, in accordance with 37 CFR 1.704(b), the adjustment of 488 days must be reduced five days in connection with the amendment submitted June 7, 2004. The reduction began June 3, 2004, the day that is the day after the date that is three months after the date the non-final Office action was mailed on March 2, 2004, and ended June 7, 2004, the date an amendment in response to the non-final Office action was received.

A supplemental non-final Office action was mailed June 16, 2004 to which a timely response was submitted August 23, 2004. The Notice of Allowance was timely mailed in accordance with 37 CFR 1.702(a)(2) on December 15, 2004.

Applicants argue that the non-final Office action mailed June 16, 2004 was not a supplemental Office action within the meaning of 35 USC 1.132, but instead was an interview summary for which a response was not required. Thus, applicants argue that an additional adjustment of 68 days is appropriate under 37 CFR 1.702(a)(2).

Applicants arguments have been considered, but are not found convincing. Review of the supplemental non-final Office action mailed June 14, 2004 indicates that it is in fact an Office communication within the meaning of 35 USC 112 which set a three month shortened statutory period of time for response.

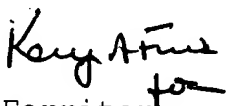
Applicants timely submitted a reply August 23, 2004. The non-final Office action corrected the previously filed non-final Office action and specifically set forth a new period of time for response. An interview summary was included with the non-final Office action.

Accordingly, the application was entitled to a patent term adjustment of 483 days at the time of allowance.

The Office hereby acknowledges receipt of the required application fee of \$200.00.

The application file is being forwarded to the Publications Division for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.


Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Adjustment PAIR Calculation